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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Linda S. Mansfield, Mary G. Rossano, and Ruth A. Vrable  
Application No.: 09/670,096 Group No.: 1645  
Filed: 2000 September 26 Examiner: Padmavathi Baskar, Ph.D.  
For: VACCINE TO CONTROL EQUINE PROTOZOAL MYELOENCEPHALITIS  
IN HORSES

Commissioner for Patents  
Washington, D.C. 20231

**NOTICE OF APPEAL FROM THE PRIMARY EXAMINER  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES  
(37 C.F.R. § 1.191)**

NOTE: An appeal may be based on one rejection in a prior application and one rejection in a continuing application. 62 Fed. Reg. 53,131, at 53,167; 1203 O.G. 63, at 93 (Oct. 10, 1997).

NOTE: There is no requirement for a notice of appeal to: (1) be signed; or (2) identify the appealed claims. 62 Fed. Reg. 53,131, at 53,167; 1203 O.G. 63, at 94 (Oct. 10, 1997).

Applicant hereby appeals to the Board from the decision of the Primary Examiner, mailed 1/23/2003, finally rejecting claims 1-3 and 21-22.

The item(s) checked below are appropriate:

**1. STATUS OF APPLICANT**

This application is on behalf of

- ☐ other than a small entity.  
☒ a small entity.

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

☒ deposited with the United States Postal Service in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231

37 C.F.R. § 1.8(a)

37 C.F.R. § 1.10 \*

☒ with sufficient postage as first class mail.

☐ as "Express Mail Post Office to Addressee"

Mailing Label No. \_\_\_\_\_ (mandatory)

**TRANSMISSION**

☐ facsimile transmitted to the Patent and Trademark Office, (703) \_\_\_\_\_

Tammi L. Taylor

Signature

Date: 4/22/2003

Tammi L. Taylor

(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.5 continues to be taken into account in determining timeliness. See § 1.702(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

(Notice of Appeal from the Primary Examiner to Board [9-6]—page 1 of 3)

A statement

☒ is attached.

☐ was already filed on \_\_\_\_\_

## 2. FEE FOR FILING NOTICE OF APPEAL

Pursuant to 37 C.F.R. § 1.17(b), the fee for filing the Notice of Appeal is:

☒ small entity \$160.00  
☐ other than a small entity \$320.00

Notice of Appeal fee due \$ 160.00

## 3. EXTENSION OF TERM

*NOTE: 37 C.F.R. § 1.704(b) ". . . an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph."*

*NOTE: The time periods set forth in 37 C.F.R. § 1.191 are subject to the provision of § 1.136 for patent applications. 37 C.F.R. § 1.191(d). (But see 37 C.F.R. § 1.645 for extension of time in interference proceedings and 37 C.F.R. § 1.550(c) for extension of time in reexamination proceedings).*

*(complete (a) or (b), as applicable)*

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

(a) ☐ Applicant petitions for an extension of time under 37 C.F.R. § 1.136 (fees: 37 C.F.R. § 1.17(a)(1)-(4)) for the total number of months checked below:

Extension (months)	Fee for other than small entity	Fee for small entity
<input type="checkbox"/> one month	\$ 110.00	\$ 55.00
<input type="checkbox"/> two months	\$ 410.00	\$ 205.00
<input type="checkbox"/> three months	\$ 930.00	\$ 465.00
<input type="checkbox"/> four months	\$ 1,450.00	\$ 725.00

Fee: \$ \_\_\_\_\_

If an additional extension of time is required, please consider this a petition therefor.

*(check and complete the next item, if applicable)*

☐ An extension for \_\_\_\_\_ months has already been secured. The fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ \_\_\_\_\_

or

(b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

4. TOTAL FEE DUE

The total fee due is:

Notice of Appeal fee \$ 160.00

Extension fee (if any) \$ -0-

TOTAL FEE DUE \$ 160.00

5. FEE PAYMENT

☒ Attached is a ☒ check ☐ money order in the amount of \$ 160.00

☐ Authorization is hereby made to charge the amount of \$ \_\_\_\_\_

☐ to Deposit Account No. \_\_\_\_\_

☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should not be included on this form as it may become public.

☐ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

6. FEE DEFICIENCY

**NOTE:** If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum, six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, 1065 O.G. 31-33.

☒ If any additional extension and/or fee is required,

AND/OR

☒ If any additional fee for claims is required, charge:

☒ Deposit Account No. 13-0610

☐ Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should not be included on this form as it may become public.

Date: 4/22/2003

Reg. No.: 20,931

Customer No.: 21036

  
SIGNATURE OF PRACTITIONER

Ian C. McLeod  
(type or print name of practitioner)

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MAY 02 2003

Practitioner's Docket No. MSU 4.1-526

Linda S. Mansfield, Mary G. Rossano, ALICE

☒ Applicant and Ruth A. Vrable ☐ Patentes

☒ Application No. 09/670,096 ☐ Patent No.

☒ Filed on 2000 September 26 ☐ Issued on

Title: VACCINE TO CONTROL EQUINE PROTOZOAL MYELOENCEPHALITIS IN HORSES

**STATEMENT OF STATUS AS SMALL ENTITY**  
**(37 C.F.R. § 1.27(a)(3))—NONPROFIT ORGANIZATION**

I hereby state that I am an official empowered to act on behalf of the nonprofit organization identified below:

Name of Nonprofit Organization Board of Trustees of MICHIGAN STATE UNIVERSITY

Address of Nonprofit Organization 238 Administration Building, MSU East Lansing, Michigan 48824-1046

**TYPE OF NONPROFIT ORGANIZATION**

- ☒ University or other institution of higher education (located in any country)  
☐ Tax exempt under Internal Revenue Service Code (26 U.S.C. 501(a) and 501(c)(3))  
☐ Nonprofit scientific or educational under statute of state of the United States of America (35 U.S.C. 201(n))

(Name of State \_\_\_\_\_)  
(Citation of Statute \_\_\_\_\_)

- ☐ Would qualify as tax exempt under Internal Revenue Service Code (26 U.S.C. 501(a) and 501(c)(3)), if located in the United States of America  
☐ Would qualify as Nonprofit Scientific or Educational under statute of state of the United States of America or would be tax exempt under the Internal Revenue Service Code (26 U.S.C. 501(a) and 26 U.S.C. 501(c)(3)) if located in the United States of America

(Name of State \_\_\_\_\_)  
(Citation of Statute \_\_\_\_\_)

I hereby state that the nonprofit organization identified above qualifies as a nonprofit organization, as defined in 37 C.F.R. § 1.27(a)(3), for purposes of paying reduced fees to the United States Patent and Trademark Office under Sections 41(a) and (b) of Title 35, United States Code, with regard to the invention described in

- ☐ the specification filed herewith, with title as listed above.  
☒ the application identified above.  
☐ the patent identified above.

(Small Entity—Non-Profit [7-3]—page 1 of 3)





I hereby state that rights under contract or law have been conveyed to, and remain with, the nonprofit organization, with regard to the above identified invention.

If the rights held by the nonprofit organization are not exclusive, each individual, concern or organization having rights to the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who would not qualify as a person under 37 C.F.R. § 1.27(a)(1), if that person made the invention, or by any concern that would not qualify as a small business concern under 37 C.F.R. § 1.27(a)(2), or a nonprofit organization under 37 C.F.R. § 1.27(a)(3).

*NOTE: Separate statements should be obtained from each named person, concern or organization having rights to the invention as to their status as small entities.*

Each such person, concern or organization having any rights in the invention is listed below:

- ☒ No such person, concern, or organization exists.  
☐ Each such person, concern or organization is listed below.

Name \_\_\_\_\_  
 Address \_\_\_\_\_

☐ INDIVIDUAL      ☐ SMALL BUSINESS CONCERN      ☐ NONPROFIT ORGANIZATION

Name \_\_\_\_\_  
 Address \_\_\_\_\_

☐ INDIVIDUAL      ☐ SMALL BUSINESS CONCERN      ☐ NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 C.F.R. § 1.27(g)(2))

*NOTE: "The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any paper by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter. Violations of § 10.18(b)(2) of this chapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under § 10.18(c) of this chapter. Any practitioner violating § 10.18(b) may also be subject to disciplinary action. See §§ 10.18(d) and 10.23(c)(15)." 37 C.F.R. § 1.4(d)(2).*

**Dr. Paul M. Hunt**  
**Associate Vice President for**  
**Research and Graduate Studies**  
Name of Person Signing \_\_\_\_\_  
Title in Organization \_\_\_\_\_  
Address of Person Signing 238 Administration Building, MSU  
East Lansing, Michigan 48824-1046

SIGNATURE *Paul M. Hunt* Date April 21, 2003